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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 ORACLE USA, INC., a Colorado corporation;
10 ORACLE AMERICA, INC., a Delaware
11 corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

Case No. 2:10-cv-0106-LRH-VCF

12 Plaintiffs,

ORDER

13 v.

14 RIMINI STREET, INC., a Nevada corporation;
15 SETH RAVIN, an individual,

16 Defendants.

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18 Before the court is plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle
19 International Corporation’s (collectively “Oracle”) motion to strike portions of defendants
20 Rimini Street, Inc. (“Rimini Street”) and Seth Ravin’s (“Ravin”) reply to their motion to stay
21 injunction pending appeal (ECF No. 1079), or in the alternative, for leave to file a sur-reply.
22 ECF No. 1082. Also before the court is Oracle’s motion to seal its motion to strike.
23 ECF No. 1083.

24 **I. Facts and Procedural Background**

25 This action has an extensive factual and procedural history. In brief, Oracle develops,
26 manufactures, and licenses computer software. Oracle also provides software support services to
27 customers who license its software. Defendant Rimini is a company that provides similar

1 software support services to customers licensing Oracle's software and competes directly with
2 Oracle to provide these services. Defendant Ravin is the owner and CEO of Rimini.

3 On January 25, 2010, Oracle filed a complaint for copyright infringement against
4 defendants alleging that Rimini copied several of Oracle's copyright-protected software
5 programs onto Rimini's own computer systems in order to provide software support services to
6 its customers. ECF No. 1. In June 2011, Oracle filed a second amended complaint alleging
7 thirteen causes of action against defendants: (1) copyright infringement; (2) violation of the
8 Federal Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a); (3) violation of the
9 California Computer Data Access and Fraud Act, Cal. Penal Code § 502; (4) violation of the
10 Nevada Computer Crimes Law, NRS § 205.4765; (5) breach of contract; (6) inducement of
11 breach of contract; (7) intentional interference with prospective economic advantage;
12 (8) negligent interference with prospective economic advantage; (9) unfair competition;
13 (10) trespass to chattels; (11) unjust enrichment; (12) unfair practices; and (13) accounting.
14 ECF No. 146.

15 A jury trial was held on Oracle's claims from September 14 through October 13, 2015.
16 On October 13, 2015, the jury returned its verdict and found that defendant Rimini engaged in
17 copyright infringement of Oracle's copyrighted PeopleSoft, J.D. Edwards, and Siebel-branded
18 Enterprise Software products. ECF No. 896. The jury also found that both defendants Rimini and
19 Ravin violated the California Computer Data Access and Fraud Act and the Nevada Computer
20 Crimes Law. *Id.* Ultimately, the jury awarded Oracle \$35,600,00.00 against Rimini for copyright
21 infringement and awarded Oracle \$14,427,000.00 against both Rimini and Ravin for violation of
22 the state computer access statutes. *Id.* After the jury verdict, Oracle filed motions for a permanent
23 injunction (ECF No. 900), for prejudgment interest (ECF No. 910), and for attorneys' fees (ECF
24 No. 917) which were granted by the court (ECF No. 1049). Subsequently, the court issued a
25 permanent injunction. ECF No. 1065. In response, defendants appealed the permanent injunction
26 to the Ninth Circuit Court of Appeals. ECF No. 1067. Along with its appeal, defendants filed the
27 underlying motion to stay the injunction pending the outcome of their appeal. ECF No. 1069.

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1 **II. Motion to Strike (ECF No. 1082)**

2 In its motion, Oracle argues that the court should strike portions of defendants' recent
 3 reply brief, or in the alternative, allow leave to file a sur-reply. Pursuant to Rule 12 of the Federal
 4 Rules of Civil Procedure, the court may strike a filing for "any redundant, immaterial,
 5 impertinent, or scandalous matter." FED. R. CIV. P. 12(f). Further, to the extent that a party raises
 6 a new argument or proffers new evidence and information in a reply brief, that argument or
 7 evidence is improper because the opposing party is deprived of an opportunity to respond. *Tovar*
 8 *v. United States Postal Service*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993). Therefore, the court
 9 cannot consider new evidence provided in a reply when the other party does not have an
 10 opportunity to respond to the evidence. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996).

11 Here, the court finds that based on the breadth of new arguments and evidence raised in
 12 the reply, rather than strike the challenged portions of defendants' reply which provide relevant
 13 argument, evidence, and context for the court's ultimate disposition on the underlying motion to
 14 stay, Oracle should be granted an opportunity to provide a brief response. *See Cedars-Sinai*
 15 *Medical Center v. Shalala*, 177 F.3d 1126, 1129 (9th Cir. 1999) (a court has the inherent
 16 authority to grant leave to a party to file a sur-reply when the information would be germane to
 17 the court's evaluation of a pending matter). Therefore, the court shall grant Oracle's motion with
 18 respect to filing a sur-reply.

19 **III. Motion to Seal (ECF No. 1083)**

20 Oracle also seeks to seal the present motion to strike on the basis that it includes
 21 confidential business information. As an initial matter, the court is acutely cognizant of the
 22 presumption in favor of public access to papers filed in the district court. *See Hagestad v.*
 23 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995). Therefore, a party seeking to file materials under
 24 seal bears the burden of overcoming that presumption by showing that the materials are covered
 25 by an operative protective order and are also deserving of confidentiality. *See Foltz v. State Farm*
 26 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2005). Specifically, a party must "articulate
 27 compelling reasons supported by specific factual findings that outweigh the general history of

1 access and the public policies favoring disclosure.” *Kamakana, City and County of Honolulu*,
2 447 F.3d 1172, 1179 (9th Cir. 2006) (internal citations omitted).

3 Here, in this intellectual property action, the court has entered a protective order
4 governing documentation and testimony that is confidential to the parties' internal research and
5 development, internal business strategies, and other highly sensitive areas. The court has
6 reviewed the documents and pleadings on file in this matter and finds that the documents at issue
7 in the present motions contain information that is either designated "Confidential" and/or
8 "Highly Confidential" under the protective order. The court finds that Oracle has satisfied its
9 burden to show compelling reasons for filing the various pleadings under seal. Further, the court
10 notes that the parties appropriately filed redacted versions of the same pleadings for public
11 record. Accordingly, the court shall grant the motion to seal.

13 IT IS THEREFORE ORDERED that plaintiffs' motion to strike (ECF No. 1082) is
14 GRANTED in accordance with this order. Plaintiff is GRANTED leave to file a brief sur-reply
15 to defendants' motion to stay (ECF No. 1069) of not more than ten (10) pages within three (3)
16 days of entry of this order.

17 IT IS FURTHER ORDERED that plaintiffs' motion to seal (ECF No. 1083) is
18 GRANTED.

19 IT IS SO ORDERED.

20 DATED this 24th day of October, 2016.

The signature is handwritten in blue ink, appearing to read "Hicks".

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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